

## Committee report

Committee	<b>CABINET</b>
Date	<b>10 SEPTEMBER 2013</b>
Title	<b>RIVERSIDE CENTRE- LEASE ARRANGEMENTS</b>
Report of/to	<b>CABINET MEMBER FOR RESOURCES</b>

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### EXECUTIVE SUMMARY

1. The Riverside Centre ( the building) is owned by the Council and leased to the Riverside Centre Limited which is a Registered Charity (charity reference 1010432), a Company Limited by Guarantee and also has a social enterprise trading arm (Riverside Ventures). For the purposes of the report the overall organisation is referred to as just the Riverside Centre. There have been a history of disputes between the Council and the Riverside Centre that remain unresolved. This report proposes an overall framework and new lease arrangements which are intended to provide a constructive way forward for both the Council and the Riverside Centre.
2. The purpose of these arrangements is to enable the Riverside Centre to be used to provide a much needed resource to provide information, advice and support to disabled people and others with long term health conditions and their carer's as well as a physical space for voluntary and community sector organisations who provide similar information, advice and support services
3. Cabinet is asked to agree the proposed way forward so that detailed arrangements can be worked up and reported back to Cabinet for final decision.

### BACKGROUND

4. The Riverside Centre building is owned by the Council and leased to the Riverside Centre. The building was constructed in four phases from 1987 and various leases have been entered into. The current lease commenced in October 2003 for a term of 25 years at a rent of £54,000 p.a. with 5 yearly rent reviews .A rent review was due with effect from 1<sup>st</sup> October 2008 but has yet to be implemented.
5. The historical context is complicated and the financial arrangements are unclear with areas of dispute between the Riverside Centre and the Council spanning some years.
6. The main issues have related to two distinct areas:-
  - a) Financial issues relating to payroll, rent and grants from the Council
  - b) Lease issues relating to restrictions on use and rent level

a) Financial issues relating to payroll and grants from the Council

Up until October 2010 the Council undertook a payroll service for the Riverside Centre which included the Council paying salaries and related costs and then being reimbursed.

In summer 2010 negotiations were concluded with the Riverside Centre to move from a grant funded approach to the provision of services for disabled people to one based on people eligible for adult social care services funding the support they received from the Riverside Centre through their “personal budget.” The arrangements for managing this transition did not go as well as planned and this resulted in a dispute about how much was owed to the Riverside Centre for these services.

In addition to this there was also disagreement about how much the council should pay the Riverside Centre for the provision of a transport hub facility.

As a consequence of these disputes the Riverside Centre stopped reimbursing the Council for their payroll costs and attempts to resolve the position by negotiation between the Council and the Riverside Centre were unsuccessful.

To settle these matters the Council and the Riverside Centre entered into a mediation process that was concluded in August 2012. This resulted in all the financial matters being resolved i.e. the payroll costs being reimbursed, the agreed transport hub costs and care support costs being paid to the Riverside Centre, and the rent settled to 30 September 2012.

b) Lease issues relating to restrictions on use and rent level

The basis of the current lease is a full repairing lease with significant restrictions as to use. The rent of £54,000 is below market rents and reflects; the core business of delivery of services to people with disabilities or long term health conditions and their carers; the provision of access to the building by voluntary sector organisations and the restrictive nature of the lease.

7. The mediation did not cover the dispute between the Council and the Riverside Centre in relation to the lease and it was agreed that this would be dealt with separately. The two areas of dispute under the lease related to the subletting and use of the building and the rent level charged.
8. The current lease is restrictive and the Riverside Centre could be in breach of the lease in regards to subletting and letting out the building. However, as a charitable organisation it is accepted that it needs to operate in a way that is viable and restricting its ability to raise income, providing that its overall purpose is maintained, is not a sensible approach.
9. In relation to the rent payable of £54,000 per annum this is below market value for a property of this size and in addition although the lease makes provision for 5 yearly rent reviews these have not been undertaken. When the current lease was entered into there was also a side letter which implied that “notwithstanding the rent review provisions set out in the lease the rent would be further reviewed and if necessary adjusted should grant funding for the centre be reduced so as to impact on the ability of the Centre to meet the

current rent under the terms of the lease” the Riverside Centre have argued that with the shift from grant payment to individual funding via personal budgets the side letter comes into play. The council’s view is that this may not be legally enforceable and therefore it has been another area of dispute.

10. What is clear is that the current lease is not a sensible or practicable basis for the future and there needs to be an absolutely clear and workable relationship between the Council and the Riverside Centre based on an effective lease at an appropriate rent.

## STRATEGIC CONTEXT

11. Supporting older and vulnerable residents is a strategic priority of the Council. The future of the Riverside Centre as a resource for disabled people and others with long term health conditions and their carer’s as well as providing a physical space for voluntary and community sector organisations who provide information, advice and support services is an important element in the community based support that the Council wishes to develop.
12. The Council is also developing its strategic asset management strategy including its use and disposal of land and buildings and its link to localism and supporting community initiatives.

## PROPOSED WAY FORWARD

13. In considering a way forward it is important to deal with the remaining disputes in relation to the lease but more importantly to provide a solution that enables the Riverside Centre to be used effectively and provide a sustainable basis for the organisation(s) managing it.
14. One option that was being pursued was that, in the event that the Riverside Centre was unable to be viable in continuing with the lease, the Council should take back the centre and manage the delivery of services that met the original purpose. This position would be contrary to what the Council has done in enabling other services to be developed and maintained within and by the community, is unlikely to deliver a more effective solution and would likely be more costly.
15. On this basis the proposed way forward is to develop an approach that maintains the centre as a key resource managed and operated by the voluntary sector but on a basis that develops a wider voluntary sector involvement and investment with a viable lease arrangement.
16. There is external grant funding available to voluntary sector organisations that is not available to local authorities but which does not prohibit local authorities making additional funding available should it choose to do so. . A consortium of Community Action Isle of Wight, IW Citizens Advice Bureau and Isle of Wight Age UK have already been successful in securing external grant funding to provide an information hub and this and other funding that could be pursued could make a considerable contribution to refreshing the fabric of the building and providing a range of additional services to be located there. It would, however, require a different governance arrangement for the Riverside Centre to incorporate the different delivery model.
17. To enable this to happen, the Council would undertake some form of community asset transfer probably based on a long, full repairing lease (99 years) at an appropriate

discounted rent thus providing the security and sustainability for the Centre. Although the Council would include an overall requirement about the outcomes that need to be delivered from the building it would not be restrictive to subletting or any detailed controls over use as long as they were sympathetic to the core purpose of the facility.

18. The loss of rent income of £54,000 will be partly made up by the Council not funding organisations towards their rent and also from bringing together the grant funding it gives for advice services.
19. At this stage it is proposed that the direction of travel be agreed so that the final detailed arrangements can be developed and brought back to Cabinet for final approval.
20. This direction of travel is based on:-
  - The Council developing a basis for a community asset transfer
  - The Council working with the Riverside Centre and other relevant organisations to develop a new delivery model that enables a viable future for the centre.
  - Developing a model that enables external grant funding to be attracted to invest in the centre and a working relationship with the Council in the provision of appropriate services
  - Developing appropriate governance arrangements
  - Developing an on-going working relationship between the Council and the new governance and service delivery arrangements

## CONSULTATION

21. There have been on-going discussions with the Riverside Centre as well as with Community Action Isle of Wight and the Citizen's Advice Bureau about potential opportunities for future delivery of services from the Riverside Centre. As part of the development of the way forward there will be consultation and involvement of stakeholders and users of the Riverside Centre.

## FINANCIAL / BUDGET /PROPERTY IMPLICATIONS

22. The Council owns the Riverside Centre and currently charges £54,000 per annum. If a community asset transfer is agreed with a peppercorn rent then this income will not be received. On the basis of a long lease the Council will not be in a position to take back the building either to let it at market rents, or dispose of it for a capital receipt or use it itself for its own services.
23. In reality, however, the current lease does not end until 2030 and due to the history of the provision of the centre it is unlikely to be sold off.
24. The Council can make savings by not funding organisations that would be enabled to use the centre under non-commercial terms as part of the wider arrangements. It can also make savings by bringing together a number of grants it gives for advice services. This will be explored further for the final proposals.
25. Under the current lease the Riverside Centre are responsible for dilapidations and these are currently estimated at some £50,000. Under the proposed arrangements external funding could be attracted to deal with these and provide investment in the centre.

26. Current arrangements are unworkable and a lot of time and effort has to be put in by the Council which should not be necessary if a community asset transfer is made.

### LEGAL IMPLICATIONS

27. As a new deal is proposed which will dispense with the existing lease, the Council's Community Asset Transfer policy should be considered where applicable to these particular circumstances
28. There is a legal obligation to get best consideration in any disposal but where the consideration may be less than market value (e.g. nominal lease rent etc.) additional benefits to the community must be shown which create "added value"
29. The next report to Cabinet will set out final proposals that will outline the compliance, where applicable, with the Council's Community Asset Transfer policy.

### EQUALITY AND DIVERSITY

30. As part of the development of the way forward an equality impact assessment will be undertaken. It is not intended in developing the approach that any protected groups will be disadvantaged and users of the Centre will be consulted.

### OPTIONS

31. There are a range of options open to the Council as owner and landlord of the building but they really come down to three main ones:-

**a. Enforce the lease and take legal action to remedy the breaches and if necessary take back the building.**

This would be lengthy and costly and bearing in mind the overall context would not necessarily be successful. In any event it would do nothing to develop a way forward for the building and could potentially impact on the people who use it. It needs to be recognised that there are issues from both points of view and that this is the least constructive approach and is not recommended.

**b. Change the lease to remove restrictive clauses about sub-letting.**

This would remove the conflict and enable the Riverside Centre to sub-let and undertake its operations without the detailed control exercised currently through the lease. This does not deal with the rent level or the viability of current arrangements. This could be coupled with a rent reduction but this cannot be justified in relation to other organisations or on the basis of the current delivery model. This option is therefore not recommended.

**c. Develop a community asset transfer based on a wider involvement of voluntary sector groups.**

This would have the advantage of dealing both with the practical issues with the lease and the future development of the management and operation of the Centre within a wider voluntary sector and viable framework. This option is recommended

## RISK MANAGEMENT

32. The current arrangements between the Council and the Riverside Centre are unworkable and put the Centre's operations at significant risk. The failure of the Riverside Centre would inevitably have a risk to the Council in service delivery terms and potential costs of maintaining services.
33. Option a) has a high level of risk of not being successful and making the position worse. Option b). has a risk as being perceived to be unfair and does not deal effectively with all the issues. Option c) has the least risk but still entails all the parties coming together to agree an effective way forward.
34. The final proposed arrangements will be the subject of a further Cabinet report for approval.

## RECOMMENDATION

35. To agree:-
- (i) Option c) to develop a community asset transfer based on a wider involvement of voluntary sector groups.
  - (ii) To receive a further report at Cabinet in December 2013 on the proposed final arrangements

## APPENDICES ATTACHED

36. None

## BACKGROUND PAPERS

37. None

Contact Point: David Burbage, ☎ 821000 e-mail [david.burbage@iow.gov.uk](mailto:david.burbage@iow.gov.uk)

DAVID BURBAGE  
*Managing Director and  
Strategic Director of Resources*

CLLR JOHN GILBEY  
*Cabinet Member  
for Resources*

CLLR GORDON KENDALL  
*Cabinet Member for Health,  
Community and Adult Wellbeing*